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13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
16 liability company;

17 Plaintiff,

18 v.

19 FACEBOOK, INC., a Delaware
corporation;
20 MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
21 JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
22 MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
23 DOES 1 through 50, inclusive,

24 Defendants.
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FILED
SAN MATEO COUNTY

MAR 25 2019

Clerk of the Superior Court

By DEPUTY CLERK

CIV533328

MSDOC

Motion to Seal Document(s)

1727525



Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

REDACTED
NOTICE OF MOTION AND MOTION TO SEAL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Hearing: May 3, 2019
Time 2:00 p.m.
Department: 23
Judge: Honorable V. Raymond Swope
Filing Date: April 10, 2015
Trial Date: April 25, 2019

FAXED

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D-23

1 NOTICE OF MOTION AND MOTION

2 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on May 3, 2019 at 2:00 p.m. in Department 23 of the Superior
4 Court of California, San Mateo County, 400 County Center, Redwood City, California, Birnbaum &
5 Godkin, LLP ("B&G") will and hereby does move, pursuant to the stipulated protective order that is
6 in place in this litigation, and the California Rules of Court for an order sealing confidential
7 information contained in the following documents, filed and lodged under seal on March 22, 2019:

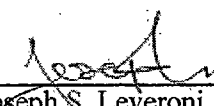
- 8 • The redacted portions of the Declaration of [Redacted] in Response to CMO
9 No. 19 ("Redacted Declaration"); and
10 • The redacted portions of the Exhibit to the [Redacted] Declaration;

11 This Motion is based on the Notice of Motion and the Memorandum of Points and Authorities;
12 all other pleadings, records and papers filed in this action; and on any other evidence as may be
13 considered by the Court prior to its decision on the Motion.

14 Dated: March 22, 2019

Respectfully Submitted,

16 MURPHY, PEARSON, BRADLEY & FEENEY

17 By: 
18 Joseph S. Leveroni

19 Attorneys for Birnbaum & Godkin, LLP
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 B&G moves to the seal the following documents:

- 4 • The redacted portions of the Declaration of [Redacted] in Response to CMO
5 No. 19 ("Redacted Declaration"); and
6 • The redacted portions of the Exhibit to the DeHaye Declaration;

7 As described below, the sealing record rules do not apply to the redacted portions of these
8 documents because they do not involve the adjudication of a substantive matter. Moreover, the
9 redacted portions (1) disclose the identity and personal identifying information of one of Plaintiff's
10 non-testifying experts and consultants, and (2) include information marked Confidential by one of
11 Plaintiff's non-testifying expert consultants. In making this request, B&G has been mindful to
12 narrowly redact and move to seal only the portions of the documents for which the harm of disclosure
13 would outweigh the public's interest in accessing court proceedings.

14 **II. Argument**

15 Cal. Rules of Court, rule 2.550(d) provides that a Court may order a record be placed or filed
16 under seal if it finds that:

- 17 (1) There exists an overriding interest that overcomes the right of public access to the
18 record;
19 (2) The overriding interest supports sealing the record;
20 (3) A substantial probability exists that the overriding interest will be prejudiced if the
21 record is not sealed;
22 (4) The proposed sealing is narrowly tailored; and
23 (5) No less restrictive means exist to achieve the overriding interest.

24 The sealed records rules do not apply to materials that are not used at trial or submitted to the court as
25 a basis for adjudication. Advisory Committee Comment to Cal. Rules of Court, rule 2.550.

26 The Court should seal the redacted portions of the documents cited above, as this material will
27 not be used at trial or as the basis for adjudication. There is no "presumption of public access to
28 [documents filed with the court], where they consisted of discovery material that was not admitted at

1 trial or used as a basis for the court's adjudication of a substantive matter." *Mercury Interactive Corp.*
2 *v. Klein*, 158 Cal. App. 4th 60, 105 (2007). The information filed under seal here identifies and
3 includes personal identifying information of a non-testifying consultant and expert who was retained
4 by B&G to assist with the litigation whose identity is not required to be disclosed pursuant to the
5 Stipulated Protective Order in this case. Such information is unrelated to the merits of the case, and
6 public disclosure, including of personal identifying information such as names, addresses, email
7 addresses and telephone numbers, would cause harm to the individual. B&G's request is narrowly
8 tailored as it only redacts information necessary to keep the identity and personal identifying
9 information of its consultant and expert under seal.

10 **III. Conclusion**

11 For the foregoing reasons, B&G requests that the Court issue an order sealing the portions of
12 the record listed above.

13 Dated: March 22, 2019

Respectfully Submitted,

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15 MURPHY, PEARSON, BRADLEY & FEENEY

16 By: 

17 Joseph S. Leveroni

18 Attorneys for Birnbaum & Godkin, LLP
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CERTIFICATE OF SERVICE

I, Jennifer Cuellar, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On March 22, 2019, I served the following document(s) on the parties in the within action:

NOTICE OF MOTION AND MOTION TO SEAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

| | |
|---|--|
| X | VIA HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as listed below. |
|---|--|

Superior Court of California County of San Mateo
Department 23
400 County Center
Redwood City, CA 94063

| | |
|---|---|
| X | VIA E-MAIL: I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is jcuellar@mpbf.com |
|---|---|

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Attorneys for Facebook, Inc.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 a true and correct statement and that this Certificate was executed on March 22, 2019.

11 By 
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Jennifer Cuellar